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U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

MATTER OF M-T-B-M-

DATE: NOV. 19, 2015

APPEAL OF TEXAS SERVICE CENTER DECISION

PETITION: FORM I-140, IMMIGRANT PETITION FOR ALIEN WORKER

The Petitioner, an elementary school teacher, seeks classification as a member of the professions holding an advanced degree. *See* Immigration and Nationality Act (the Act) § 203(b)(2), 8 U.S.C. § 1153(b)(2). The Director, Texas Service Center, denied the petition. The matter is now before us on appeal. The appeal will be dismissed.

The Petitioner has been employed as a teacher with the in Florida since September 2007. At the time of filing the Form I-140, Immigrant Petition for Alien Worker, the Petitioner was teaching at , in Florida. The Petitioner asserts that an exemption from the requirement of a job offer, and thus of a labor certification, is in the national interest of the United States. The Director found that the Petitioner qualifies for classification as a member of the professions holding an advanced degree, but that the Petitioner has not established that an exemption from the requirement of a job offer would be in the national interest of the United States. On appeal, the Petitioner submits a brief and additional evidence.

I. LAW

Section 203(b) of the Act states, in pertinent part:

> (2) Aliens Who Are Members of the Professions Holding Advanced Degrees or Aliens of Exceptional Ability. –
>
> > (A) In General. – Visas shall be made available . . . to qualified immigrants who are members of the professions holding advanced degrees or their equivalent or who because of their exceptional ability in the sciences, arts, or business, will substantially benefit prospectively the national economy, cultural or educational interests, or welfare of the United States, and whose services in the sciences, arts, professions, or business are sought by an employer in the United States.
> >
> > (B) Waiver of Job Offer –

> (i) . . . the Attorney General may, when the Attorney General deems it to be in the national interest, waive the requirements of subparagraph (A) that an alien's services in the sciences, arts, professions, or business be sought by an employer in the United States.

II. ISSUES

The Director determined that the Petitioner qualifies as a member of the professions holding an advanced degree. The sole issue in contention is whether the Petitioner has established that a waiver of the job offer requirement, and thus a labor certification, is in the national interest.

Neither the statute nor the pertinent regulations define the term "national interest." Additionally, Congress did not provide a specific definition of "in the national interest." *Matter of New York State Dep't of Transp.* (*NYSDOT*), 22 I&N Dec. 215, 217-18 (Act. Assoc. Comm'r 1998), set forth several factors which must be considered when evaluating a request for a national interest waiver. First, a petitioner must establish that she seeks employment in an area of substantial intrinsic merit. *Id.* at 217. Next, a petitioner must demonstrate that the proposed benefit will be national in scope. *Id.* Finally, the petitioner seeking the waiver must show that she will serve the national interest to a substantially greater degree than would an available U.S. worker having the same minimum qualifications. *Id.* at 217-18.

The Petitioner has established that her work as a school teacher is in an area of substantial intrinsic merit. It remains, then, to determine whether the proposed benefits of the Petitioner's work will be national in scope and whether she will benefit the national interest to a greater extent than an available U.S. worker with the same minimum qualifications.

Although the national interest waiver hinges on prospective national benefit, the petitioner must establish her past record justifies projections of future benefit to the national interest. *Id.* at 219. The petitioner's subjective assurance that she will, in the future, serve the national interest cannot suffice to establish prospective national benefit. The inclusion of the term "prospective" is used here to require future contributions by the petitioner, rather than to facilitate the entry of an individual with no demonstrable prior achievements, and whose benefit to the national interest would thus be entirely speculative. *Id.*

Furthermore, eligibility for the waiver must rest with the petitioner's own qualifications rather than with the position sought. Assertions regarding the overall importance of a petitioner's area of expertise cannot suffice to establish eligibility for a national interest waiver. *Id.* at 220. At issue is whether this petitioner's contributions in the field are of such significance that she merits the special benefit of a national interest waiver, a benefit separate and distinct from the visa classification she seeks. A petitioner must demonstrate a past history of achievement with some degree of influence on the field as a whole. *Id.* at 219, n. 6. In evaluating the petitioner's achievements, original innovation, such as demonstrated by a patent, is insufficient by itself. Whether the specific innovation serves the national interest must be decided on a case-by-case basis. *Id.* at 221, n. 7.

III. FACTS AND ANALYSIS

The Petitioner filed the Form I-140 on July 1, 2013. Regarding her eligibility for the national interest waiver, the Petitioner stated:

> In my case, I am teaching elementary kids, 8 or 9 years old and stationed in one school, [redacted] will my "simple" usually unnoticed job benefit the nation? I am just building minds, or do I really need to be a scientist, a Ph.D., a genetic engineer or the like to be given this privilege of the national interest waiver. My work goes beyond the bridge that was build or a stem cell that was discovered. I help kids realize they are important. . . . Unlike other in profession [*sic*], in teaching the result is not immediate but the offshoot of a well taught elementary children are [*sic*] better high school and college students and nation's professionals in the long run.
>
> If an engineer in a given place was granted the privilege under National Interest Waiver, because the bridge he built, maybe [*sic*] used by travelers from other states qualifying it as of national interest, I firmly believe, that by educating the young, [*sic*] is much more of national interest than any material products.

The Petitioner appears to have misunderstood the factual scenario in *NYSDOT*. While the beneficiary in *NYSDOT* was a bridge engineer, he did not receive a national interest waiver. The decision in *NYSDOT* explained why that beneficiary's employer had not established his eligibility for the waiver.

The Petitioner's statements concerning public elementary education as a whole address the intrinsic merit of education and the first prong of the *NYSDOT* national interest analysis, which the Director found the Petitioner had satisfied. The overall importance of education alone, however, does not qualify every educator for the national interest waiver. Section 203(b)(2)(A) of the Act subjects members of the professions to the job offer requirement, and section 101(a)(32) of the Act states that school teachers are members of the professions. Therefore, the general importance of teaching, in and of itself, does not justify granting the waiver to individual school teachers. With respect to the Petitioner's activities as a school teacher, the Director determined that the scope of the Petitioner's work and her impact on the field did not satisfy the second and third prongs of the *NYSDOT* national interest analysis.

A. National in Scope

The second prong of the *NYSDOT* national interest analysis requires that the benefit arising from the petitioner's work will be national in scope. The Director stated that the submitted evidence did not demonstrate how the benefits of the Petitioner's employment as a teacher in an elementary school in Florida would be national in scope. *NYSDOT* provides examples of employment where the benefits would not be national in scope:

> For instance, pro bono legal services as a whole serve the national interest, but the impact of an individual attorney working pro bono would be so attenuated at the national level as to be negligible. Similarly, while education is in the national interest, the impact of a single schoolteacher in one elementary school would not be in the national interest for purposes of waiving the job offer requirement of section 203(b)(2)(B) of the Act. As another example, while nutrition has obvious intrinsic value, the work of one cook in one restaurant could not be considered sufficiently in the national interest for purposes of this provision of the Act.

Id. at 217, n.3. *NYSDOT* specifically identifies a school teacher as an example of a meritorious occupation that lacks national scope. On appeal, the Petitioner asserts that the quoted passage represents "a pre judgment as to whether an Instructional Teacher will be able to qualify for the waiver. . . . If this is the case no single school teacher may qualify for the waiver." Nonetheless, while the Petitioner expresses her disagreement with the quoted passage, she acknowledges *NYSDOT*'s finding that the impact of a single school teacher in one elementary school would not be in the national interest for purposes of waiving the job offer requirement. In addition, the Petitioner states that, as much as "teachers would want to get to multiple schools so as to widen their service area, the nature of the job will not permit it. . . . It has to be taken into consideration that, teachers are limited by the system they are into [*sic*]." With regard to following the guidelines set forth in *NYSDOT*, by law, U.S. Citizenship and Immigration Services (USCIS) does not have the discretion to ignore binding precedent. *See* 8 C.F.R. § 103.3(c). The Petitioner does not point to any evidence in the record showing that her specific work will produce national benefits in the field of public education.

The Petitioner asserts that elementary education forms the foundation for subsequent higher levels of education and that the United States will benefit from giving "Instructional Teachers a fair chance to obtain lawful permanent residence." As members of the professions, teachers are included in the statutory clause at section 203(b)(2)(A) that has the job offer requirement. By the plain language of section 203(b)(2)(A) of the Act, a foreign worker is generally subject to the job offer requirement (including labor certification) even if that worker's employment "will substantially benefit prospectively the . . . educational interests . . . of the United States." Employment in a beneficial occupation alone, therefore, does not qualify the petitioner for the national interest waiver. There are no blanket waivers for school teachers; USCIS grants national interest waivers on a case-by-case basis, rather than establishing blanket waivers for entire fields of specialization. *See NYSDOT*, 22 I&N Dec. at 217.

Likewise, exceptional ability, defined at 8 C.F.R. § 204.5(k)(2) as "a degree of expertise significantly above that ordinarily encountered" in a given field, is not automatically grounds for granting the waiver. Therefore, an elementary school teacher with a degree of expertise significantly above that ordinarily encountered in the field of elementary education would not, as a result, necessarily qualify for the waiver. These provisions are found in the statute, and USCIS has no discretion to disregard or overrule them. Exceptional ability that will substantially benefit the United States is not sufficient grounds for approving the national interest waiver. We note that the

national interest waiver is not a standard avenue for immigration. It is, rather, a special exemption from the normal requirement of obtaining a labor certification.

As the Petitioner has not established that her employment as a teacher with the has an impact beyond her school district and its students, she has not shown that the proposed benefits of her work will be national in scope.

B. Serving the National Interest

The third prong of the *NYSDOT* national interest analysis requires that the petitioner serve the national interest to a substantially greater degree than would an available U.S. worker with the same minimum qualifications. The Petitioner submitted her academic records; employment verifications; teaching certifications and licenses for Florida, Nebraska, New Mexico, and the Philippines; pay statements; membership documentation for the National Education Association and Florida Education Association; and various local awards and school recognition certificates.

Academic records, occupational experience, licenses and professional certifications, salary information, association memberships, and recognition for achievements are elements that can contribute toward a finding of exceptional ability. *See* 8 C.F.R. § 204.5(k)(3)(ii)(A)-(F). However, in this instance the Petitioner is seeking a waiver of the job offer as a member of the professions holding an advanced degree. Pursuant to section 203(b)(2)(A) of the Act, foreign nationals of exceptional ability are generally subject to the job offer/labor certification requirement; they are not exempt by virtue of their exceptional ability. *NYSDOT*, 22 I&N Dec. at 218, 222. Therefore, whether a given individual seeks classification as an alien of exceptional ability, or as a member of the professions holding an advanced degree, that individual cannot qualify for a waiver just by demonstrating a degree of expertise significantly above that ordinarily encountered in her field of expertise. The national interest waiver is an additional benefit, separate from the classification sought, and therefore eligibility for the underlying classification does not demonstrate eligibility for the additional benefit of the waiver. Without evidence demonstrating that the Petitioner's work has affected the field as a whole, employment in a beneficial occupation such as a teacher, therefore, does not by itself qualify her for the national interest waiver.

With regard to the submitted awards and school recognition certificates, particularly significant awards may serve as evidence of the Petitioner's impact and influence on her field, but the Petitioner has not demonstrated that any of the awards she received have more than local, regional, or institutional significance. For example, the Petitioner submitted a copy of a "Certificate of Recognition" from the Republic of the Philippines Department of Education, Culture, and Sports, , thanking the Petitioner "for her efforts in the preparation of weekly plans for use of Multi-grade classes for Grades I and II in the Division of Antique for school year 1995-1996." Additional educational resource material from the identified the Petitioner as one of 20 Grade I contributors to an English II workbook, but the submitted documentation does not show that her work in the Philippines had more than a regional impact. Although it is possible for a professional in the field of education to have a wider impact, for example by developing curricular materials that other teachers then adopt on a national basis, there is

no documentary evidence reflecting any such national implementation of the Petitioner's instructional material.

In addition, the Petitioner submitted various certificates of participation and completion for training courses and seminars relating to her professional development. While taking courses and attending seminars are ways to increase one's professional knowledge and to improve as a teacher, there is nothing inherent in these activities to establish eligibility for the national interest waiver.

The Petitioner also provided several letters of support from her colleagues and supervisors discussing her teaching skills and activities in the field. These individuals attested to the Petitioner's talent, dedication, and contributions to her schools, but they did not indicate that the Petitioner has had the wider impact and influence necessary to qualify for the national interest waiver under *NYSDOT*. For example, a staff scientist at the knows the Petitioner through the (of which is a board member and a former president). stated:

> [I]t is clear that [the Petitioner] belongs to an elite class of elementary school educators. Her list of exemplary accomplishments . . . speaks loud and clear as to the caliber of her contributions to the educational field. Foremost among this [*sic*] is her unique talent in teaching, using which is undisputedly the main factor in carrying [*sic*] score in 2011 FCAT Math Results from the lowest 4 countries [*sic*] in the State of Florida up to number 8 overall! [The Petitioner] is also one of the only three 3rd grade math teachers from who made the 32 percentage point gain (46% to 78%) in 2010, which earned a one point up grade for

While holds the Petitioner in high regard, he did not explain how the Petitioner has influenced the field of education as a whole (as opposed to her own classroom and school). Although indicated that the Petitioner has a unique talent in teaching using the record does not show, and the Petitioner does not state, that she developed the educational program. The Petitioner's appellate submission includes educational material, but there is no documentary evidence indicating that the Petitioner authored the material or that she is responsible for any educational improvements at a national level.

The remaining letters of support are from local school officials, who attest to the Petitioner's success in the classroom but provide no evidence that the Petitioner has had a wider influence on the field of education. For example, district coordinator for the awarded to stated that the Petitioner "made significant educational contributions and reforms in the field of Math," but she identified no contribution beyond stated that the Petitioner's "students went from 46% proficiency in 2010 to 78% proficiency in 2011. . . . This was a tremendous achievement for ; a school that earned a grade of an 'F' . . . in 2010 then moved to a 'C'" due to the efforts of the Petitioner and two other

third grade math teachers. The principal and assistant principal of also attested to these statistics. This improvement is a considerable one in relative terms, but does not show that the Petitioner has had a national impact on elementary math education.

assistant principal of , stated: "I believe, if she be given a chance to write instructional materials in her field, [the Petitioner] would be able to share her strategies [with] all math teachers of the country." The assertion that instructional materials written by the Petitioner would be influential, were they to come into existence, is speculative and therefore without weight. Furthermore, the Petitioner must establish eligibility at the time of filing the petition. 8 C.F.R. §§ 103.2(b)(1), (12). A visa petition may not be approved based on speculation of future eligibility or after the petitioner or beneficiary becomes eligible under a new set of facts. *See Matter of Michelin Tire Corp.*, 17 I&N Dec. 248 (Reg. Comm. 1978); *Matter of Katigbak*, 14 I&N Dec. 45, 49 (Comm. 1971). Additionally, we note that according to , Assistant Regional Director of the Department of Education at Philippines, the Petitioner's "multi-grade lesson plans and workbooks . . . were utilized in the Philippines" and that her work "made [a] significant contribution in the field of education." However, there is no documentary evidence showing that the Petitioner's work was implemented nationally or has otherwise affected the field as a whole.

principal of addressed the Petitioner's use of new technology, stating that the Petitioner "was the only teacher at to utilize" the Response System Clickers, a new technology tool in further asserted:

> That year, [the Petitioner's] class scored the highest gains at and in the for the third grade on the FCAT Mathematics Assessment. The following summer, [the Petitioner] conducted a Response System Clickers training for all thirty-five teachers . . . at . . . and now the technology system is used in all third through fifth grade math classrooms at . . . . With this our math scores continue to improve each year. . . .

did not indicate that the Petitioner has influenced education beyond the Rather, she called the Petitioner "a great resource to our campus." With respect to the cited example of the Petitioner's work, her early adoption of "a new technology tool" indicates that [the Petitioner] was ahead of her colleagues at but she did not develop the technological tool and therefore its use is not evidence of her impact on the field of education. An individual's job-related training in a new method, whatever its importance, does not reflect an achievement or contribution comparable to the original development of that new method. *See NYSDOT*, 22 I&N Dec. at 221, n.7.

English for Speakers of Other Languages (ESOL) program specialist for , stated that the Petitioner "is definitely an asset to our program and to our ESOL students. . . . Her expertise in handling multigrade and multilevel students in the same classroom setting has proven incomparable in assisting our middle and high school students." did not indicate that the Petitioner's methods have had, or will have, wider implementation. Instead, she stated that the

Petitioner "would be a great asset to any educational setting" and should have "the opportunity to work and watch the immense progress and success of all students under her instruction." Although [redacted] asserted that the Petitioner has provided valuable assistance as an ESOL-endorsed teacher for [redacted], [redacted] did not provide any specific examples of how the Petitioner's work has influenced the field of public education as a whole.

The Petitioner submitted letters of varying probative value. We have addressed the specific assertions above. Generalized conclusory assertions that do not identify specific contributions or their impact in the field have little probative value. *See 1756, Inc. v. U.S. Att'y Gen.*, 745 F. Supp. 9, 15 (D.D.C. 1990) (holding that an agency need not credit conclusory assertions in immigration benefits adjudications). In addition, uncorroborated assertions are insufficient. *See Visinscaia v. Beers*, 4 F.Supp.3d 126, 134-35 (D.D.C. 2013) (upholding USCIS' decision to give limited weight to uncorroborated assertions from practitioners in the field); *Matter of Caron Int'l, Inc.*, 19 I&N Dec. 19 I&N Dec. 791, 795 (Comm'r 1988) (holding that an agency "may, in its discretion, use as advisory opinions statements . . . submitted in evidence as expert testimony," but is ultimately responsible for making the final determination regarding an individual's eligibility for the benefit sought and "is not required to accept or may give less weight" to evidence that is "in any way questionable"). The submission of reference letters supporting the petition is not presumptive evidence of eligibility; USCIS may evaluate the content of those letters as to whether they support the petitioner's eligibility. *Id. See also Matter of V-K-*, 24 I&N Dec. 500, n.2 (BIA 2008) (noting that expert opinion testimony does not purport to be evidence as to "fact"). As the submitted reference letters did not provide examples indicating that the Petitioner's work has influenced the field as a whole, they do not demonstrate her eligibility for the national interest waiver.

The Petitioner submitted other evidence, including documentation showing that while in the Philippines she helped to obtain a grant from [redacted] that paid for construction, electricity, and basic furniture for the school where she worked at the time; and copies of her 2008, 2010, and 2011 comprehensive performance assessments from [redacted] The Petitioner, however, does not explain how the submitted evidence reflects that she has impacted the field to a substantially greater degree than other similary qualified educators and how her specific work has had significant impact outside of the school where she has taught. In addition, the Petitioner asserts that she conducted a "Technology Inservice Training" workshop on the use of [redacted] and [redacted]. The record does not show, and the Petitioner does not state, however, that she developed any of these classroom technologies.

Furthermore, the Petitioner also states that she "was equipped with education, training and experience which [she] applied to the underserved, low performing school of [redacted], and because of [her] dedication the progress of [her] students were [*sic*] reflected in the FCAT [Florida Comprehensive Assessment Test] results." While the submitted test results show that the Petitioner was an effective teacher at [redacted], there is no documentary evidence showing that her work has affected the field of education as a whole. A petitioner must demonstrate a past history of achievement with some degree of influence on the field as a whole. *Id.* at 219, n. 6. Improved test scores for one school do not show wider influence.

Asserting that "new graduates from this country come and go, some lasts [*sic*] only for a month or two, because they are in constant chase of better place of work," the Petitioner implies that because of this, her services are in demand. Nonetheless, the unavailability of qualified U.S. workers or the amelioration of local labor shortages is not a consideration in national interest waiver determinations because the labor certification process is already in place to address such shortages. *NYSDOT*, 22 I&N Dec. at 218. The issue of whether similarly-trained workers are available in the U.S. is an issue under the jurisdiction of the U.S. Department of Labor through the labor certification process. *Id.* at 221. In addition, the Petitioner asserts that "the labor certification process will delay delivery of [her] services to [her] students as well as the continuity of the system [she] had implemented," but the timing of the filing (such as the imminent expiration of her nonimmigrant status) does not determine eligibility for the waiver. The national interest waiver is not just a means for employers (or self-petitioning foreign nationals) to avoid the inconvenience of the labor certification process. *Id.* at 223.

The Petitioner states that her "case is far different from" *NYSDOT* because that precedent decision concerned an engineer rather than a teacher. The core findings in *NYSDOT* were deliberately broad, however, and the three-pronged national interest analytical framework is not limited just to engineers. In addition, the Petitioner mentions her work at [redacted] and how she was successful in teaching her students mathematics. The record includes FCAT results and Adequate Yearly Progress reports reflecting the academic progress made by the students at [redacted] in recent years. The Petitioner asserts that the recent improvements in student performance at [redacted] prove her superiority to local U.S. workers. She states: "Should there be an U.S. worker of with [*sic*] the same qualifications as I have . . . and can generate the same result as I did in the first place, I believe this school would not have remained at the bottom when it comes to students [*sic*] performance." Although the record shows that an overall improvement coincided with the Petitioner's time at the school, the submitted evidence does not establish that she was largely or solely responsible for that improvement.

The Petitioner continues: "[A]fter 5 years of teaching in this school, I was able to fully understand the background of my pupils, knowing where they are coming from is very important in designing classroom instruction which will answer the needs of the recipient." The Petitioner has not shown, however, that understanding her students' backgrounds and designing classroom instruction to meet their needs are characteristics that differentiate her from similarly qualified elementary school teachers. Regardless, there is no evidence demonstrating that the Petitioner's work has had, or will continue to have, an impact beyond her school. The Petitioner also indicates that her impact as a teacher will be more widespread in the long term, as her students "will move around the country sooner or later" and that her influence on those students will affect their later lives and benefit their future teachers in other states. The Petitioner's assertion that some of her pupils may relocate at some unspecified time in the future is not sufficient to demonstrate that her work has already had a national effect or has otherwise influenced the field as a whole.

The Petitioner asserts that raising the level of student performance should be a determining factor for the waiver. The national importance of "education" as a concept, or elementary school educators as

a class, does not establish that the work of one teacher produces benefits that are national in scope. *Id.* A local-scale contribution to an overall national effort to improve student performance does not meet the *NYSDOT* threshold.

Lastly, the Petitioner correctly mentions that the standard of proof in this matter should be a preponderance of the evidence. In most administrative immigration proceedings, the petitioner must prove by a preponderance of the evidence that he or she is eligible for the benefit sought. *Matter of Chawathe*, 25 I&N Dec. 369 (AAO 2010). The truth is to be determined not by the quantity of evidence alone but by its quality. *Id. at* 376. In the present matter, the submitted documentation does not demonstrate by a preponderance of the evidence that a waiver of the requirement of an approved labor certification will be in the national interest of the United States.

As the Petitioner has not demonstrated that her work has influenced the field as a whole or has otherwise had any national effect on public education, the Petitioner has not established that she will serve the national interest to a substantially greater degree than would an available U.S. worker with the same minimum qualifications.

IV. CONCLUSION

Considering the letters and other evidence in the aggregate, the Petitioner has not shown that the proposed benefits of her work are national in scope. In addition, the Petitioner has not established that her past record of achievement is at a level that would justify a waiver of the job offer requirement. The record does not establish that the Petitioner's work has influenced the field as a whole or that she will otherwise serve the national interest to a substantially greater degree than would an available U.S. worker having the same minimum qualifications. The petitioner need not demonstrate notoriety on the scale of national acclaim, but the national interest waiver contemplates that her influence be national in scope. *Id.* at 217, n.3. More specifically, the petitioner "must clearly present a significant benefit to the field of endeavor." *Id.* at 218. *See also id.* at 219, n.6 (the individual must have "a past history of demonstrable achievement with some degree of influence on the field as a whole").

A plain reading of the statute indicates that engaging in a profession (such as teaching) does not presumptively exempt such professionals from the requirement of a job offer based on national interest. Likewise, it does not appear to have been the intent of Congress to grant national interest waivers on the basis of the overall importance of a given profession, rather than on the merits of the individual. On the basis of the evidence submitted, the Petitioner has not established that a waiver of the requirement of an approved labor certification will be in the national interest of the United States.

The petition will be denied for the above stated reasons, with each considered as an independent and alternative basis for denial. In visa petition proceedings, it is the petitioner's burden to establish eligibility for the immigration benefit sought. Section 291 of the Act, 8 U.S.C. § 1361; *Matter of Otiende*, 26 I&N Dec. 127, 128 (BIA 2013). Here, the Petitioner has not met that burden.

ORDER: The appeal is dismissed.

Cite as *Matter of M-T-B-M-*, ID# 14485 (AAO Nov. 19, 2015)